

Re: XM Sirius Merger

Dear Sirs and Madams of the FCC,

Please allow me to fully disclose to you that I am a share holder in Sirius Satellite Radio in quantities that are inconsequential on the whole but substantial when compared to my other holdings. I am also a subscriber since the time when Sirius had about 400K subs. I have also given a subscription to a friend. So you see my motivations are clear. I am a consumer who wants optimum service and value, and an investor who wants maximum returns on my investment.

I believe my disclosure is far clearer and more honest than many of those in the letters on your site (for comment on the merger). Especially from the elected officials and the NAB whose comments I do not believe are based on my best interests. There are of course blatant conflicts of interest such as Rep. Mike Hubbard whose web site speaks of his connection to terrestrial radio (and I quote):

“Representative Hubbard left Auburn University in 1990 to head up Auburn's radio and television and sports network. In 1994, he formed the Auburn Network to handle Auburn's multi-media rights and build the network into one of the nation's most respected collegiate sports networks. He sold the multi-media sports division of the company in 2003 to Winston-Salem, N.C.-based International Sports Properties and continues to serve as president of ISP's Auburn Project.

The Auburn Network owns and operates WANI NewsTalk 1400 in the Auburn-Opelika market, as well as Studio 197, an audio production company serving the national broadcast industry, and East Alabama Living, a regional quarterly magazine. Auburn Network is also a partner in Craftmaster Printers, Inc., a commercial printing company based in Auburn.” Could this be the driver for a letter to you from the Alabama Association of Broadcasters?

There is also Senator Herb Khol who owns the Milwaukee Bucks and earns revenue from the broadcasts on WJMJ. He has also written a letter of opposition to the merger.

But for most local politicians, it is not so blatantly obvious that local politicians and local broadcasting enjoy a symbiotic relationship that satellite is not currently aloud to enjoy. Broadcasters contribute comparatively small amounts to political campaigns for whatever the favor de jour happens to be, and politicians give the money back ten fold for re-election advertising.

This is why I am looking to you to protect my interests as a consumer, not them. This is why it disturbs me that you took so long to start your “clock.” Your web site says you can start and stop it whenever you please. Why did you delay starting it by a record span of time? This appearance of pandering to the NAB and their interests is very disturbing to me. Your long running

feud with Howard Stern is also not my problem unless it compromises your ability to make a fair decision. A consumer friendly decision is all I ask of you. Your delays have been largely responsible for loss of market confidence and loss of share holder value. This serves to weaken these companies to the delight of satellite competitors.

Here are a few of my personal thoughts as a consumer. Satellite competition with terrestrial radio is obvious because terrestrial radio has improved. I have only anecdotal evidence, but I believe it to be true. My car has satellite and my wife's has terrestrial radio. She speaks highly of the stations she listens to which seemed odd to me as I am committed to satellite. Now, when I ride in her car I find that she is right. The play lists have improved and the advertising is structured in such a way as to be less intrusive. They would not have had to do this if they did not have competition from satellite.

I however want subscription radio to be clearly better because I am paying. I don't want to carry subs from different companies to hear baseball and football. You are in a position to demand consumer friendly menu pricing so that I can get what I want for less. Do this for the American Consumer. If for some reason the price of a sub gets too high, I will cancel and switch to other audio entertainment. For instance, my wife's improved terrestrial radio which has not only local but national content through syndication. The new company Slacker promises audio entertainment through WiFi and later by satellite. A colleague of mine just left to visit a family farm in rural southern Kentucky. He said he will check work email through dial up but lamented that he hadn't had his blackberry upgraded to be a wireless high speed modem. If he can do that, he can listen to internet music in the middle of nowhere. Cell phones are quickly turning into radios and MP3's that you'll be able to plug into the iPod jack in your new car. Satellite with its ridiculous capitol outlay as a requirement to enter the market is likely the weakest or near weakest in this competition. The risks in the business of something like a satellite failure are staggering when compared to other audio entertainment risks. It is the job of Satellites competitors to drive it out of business if that is what innovation on their part brings. It is not the job of any government entity that might be influenced by those competitors. These companies will not say they will go out of business if they can't merge, but if they don't merge with someone, I fear they will. Being scooped up for pennies by a huge conglomerate does not help me as an investor or the consumer in general. A large company would run the business with the whole company in mind, not the satellite radio consumer or those who once invested in it. This harms the consumer. If satellite radio fails on its own, then so be it. It does not need the FCC to push it in that direction. Satellite radio is fraught with problems. The music streams may be commercial free but their yakking DJ's sure give a lot of free plugs when they should be playing music. My signal fails when I go under an overpass or under a canopy of trees. A bigger stronger (merged) company could develop better hardware, have more

repeaters (for dead areas) and improve programming. Neither company can do that effectively now. The current situation is not consumer friendly. I recently read a well thought out but long winded compendium that was the testimony of David Balto to the Senate Committee on the Judiciary. As an antitrust lawyer, he left no stone unturned with the finest minutia of each point explained. However, many of his conclusions were based on precedence set in other cases sighting the similarities to this merger. He listed the following as examples of decision that narrowly defined markets decided by various government entities.

“Many of these factors have led the Department of Justice, the FTC and the Courts to narrowly define media markets in the past. Here are some of the examples of media markets defined by the agencies:

Cable television programming services (Time Warner/Turner merger (FTC 1996)).

Spanish language radio advertising (Univision/Hispanic Broadcasting (DOJ 2003))

Radio advertising (CBSIAmerican Radio Systems (DOJ 1998))

Movie theatres (Marquee HoldingsILCE Holdings (DOJ 2005))

Multichannel video program distribution (Direct TV/Echostar (DOJ 2002))

Local daily newspapers (McClatchy/Knight Ridder (DOJ 2006))

Alternative weekly newspapers (Village VoiceNT Media (DOJ 2003))

Broadcast TV spot advertising (News Corp./Chris-Craft (DOJ 2001))”

My problem here is that when he subsequently gave short explanations of a couple of these and from a small amount of research I have done on my own, I am not convinced that these example denials have been in my best interest as a consumer at all! They seem to smell of political meddling by members of Congress and lobbyists representing the competition (against these mergers) that are able to buy influence. I believe it is up to you to set a new precedence. Markets must be more broadly defined. The consumer must be protected by knocking down walls, not by building them! Your site for comment is running over with comments from groups who are actually made up of consumers. Multiple organizations of women, ethnic groups, rural groups and just schmucks like me are telling you how they feel. You need to listen, change policy and allow this merger or be exposed as a puppet of the political jackboots of the world.

In short if I was to ask you to adopt any philosophy to protect me, the consumer in this situation and others, it would be to protect me with “yeses” and not with “no’s”. In other words, if this merger does something to damage competition or the consumer, follow it with another yes. If that is granting more ownership or cross ownership to NAB members or even making more spectrum and satellite licenses available, then fine by me. If that knocks the

balance off, follow with another yes. This is the only way for the FCC (and other regulatory agencies) to keep up with evolving technologies and market places so that America can remain competitive in the global economy.

Finding ways to say “no” does not help the consumer or America.

Thank You for Your Consideration in this Matter,

Paul Morrison